

REMARKS

Reconsideration and allowance in view of the foregoing amendments and the following remarks are respectfully requested.

Claims 19-25 remain pending in the present application. Claims 1-18 were cancelled in a previous Amendment.

Claims 19, 21, 24, and 25 stand rejected under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 5,148,802 to Sanders et al ("the '802 patent"). Applicant respectfully traverses this rejection for the reasons presented below.

In the previous Amendment June 18, 2004, the applicant asserted that the claimed invention distinguished over the '802 patent because the claimed invention included features not taught or suggested by this references. In particular, the applicant noted that independent claim 19 recited activating the pressure generating system from a first state, in which the pressure generating system does not provide gas to a patient at a treatment pressure - to a second state, in which the pressure generating system is operated in accordance with a pressure support mode, when the processor determines that a patient is breathing into the patient interface. In the "Remarks" section of the June 18, 2004 Amendment, the applicant noted that the '802 patent does not teach or suggest an Auto-ON feature, whereby the pressure support system is turned on when patient breathing into the interface is detected.

In the "Response to Arguments" section of the outstanding September 21, 2004 Office Action, the Examiner explained that the claims were not commensurate with the arguments presented to distinguish the invention over the cited references because the claims used the phrase "substantially inactive" in describing the first state. According to the Examiner, the '802 patent reads on the claimed "substantially inactive" state by teaching providing an EPAP pressure during exhalation.

Claim 19 has again been amended in an attempt to clarify that the present invention recited in this claim includes an Auto-On function that is not taught or suggested by the '802 patent. More specifically, claim 19 has been amended to recite that the processor causes the

the pressure generating system to transition from a first state, in which the pressure generating system is *deactivated* - to a second state, in which the pressure generating system is *activated* and *operated* in accordance with a pressure support mode over multiple respiratory cycles, when the patient is deemed to be breathing into the patient interface. Applicant submits that by using the term “deactivated” in describing the first state, the present invention excludes the situation where an EPAP pressure, that is lower than an IPAP pressure - but is still a therapeutic pressure, is delivered to a patient, which is the invention of the ‘802 patent.

For the reasons presented above, applicant respectfully submits that independent claim 19 is not anticipated or rendered obvious by the cited references. In addition, claims 21, 24, and 25 are also not anticipated or rendered obvious due to their dependency from independent claim 19. Accordingly, applicant respectfully request that the above rejection of claim 19, 21, 24, and 25 be withdrawn.

Claim 20 stands rejected under 35 U.S.C. § 103 as being unpatentable over the ‘802 patent in view of U.S. Patent No. 4,345,592 to Giorgini et al. (“the ‘592 patent”). In addition, claims 22 and 23 stand rejected under 35 U.S.C. § 103 as being unpatentable over the ‘802 patent in view of U.S. Patent No. 5,117,819 to Servidio et al. (“the ‘819 patent”). Although the applicant disagrees with the Examiner’s conclusions as to the claims for the reasons set forth in the June 18, 2004 Amendment, applicant respectfully submits that these claims are not rendered obvious due to their dependency from independent claim 19. Claim 19 is not anticipated or rendered obvious by the combination of references for the reasons set forth above. Accordingly, applicant respectfully requests that the above rejection of claims 20, 22, and 23 be withdrawn.

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All objections and rejections have been addressed. It is respectfully submitted that the present application is in condition for allowance and a Notice to the effect is earnestly solicited.

Respectfully submitted,

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